IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.197 OF 2002

Shri Mahadev Pundalic Mapari,
Moitewado, Assnoda,
Bardez, Goa ... PETITIONER

VERSUS

1. Shri Namdev G. Narvekar,
   Moitewado,Assnoda,
   Bardez, Goa;

2. Mrs. Sapana Mapari,
   Sarpanch,
   Village Panchayat of
   Assnoda,
   Bardez, Goa;

3. Director of Panchayats,
   Junta House,
   Panaji, Goa ... RESPONDENTS

Shri V.A. Lawande, Advocate for the Petitioner.

CORAM : V.C. DAGA,J.

DATED : JULY 5, 2002.

ORAL ORDER

Heard the learned Counsel for the Petitioner. He raised three contentions to challenge the action of the Village Panchayat: Firstly, the contentions based on the scope of Section 76(4) of the Goa Panchayat Raj Act, 1994, which contemplates a notice under sub-Section (1), and an opportunity to the owner or occupier to

reasonably state his objections and adduce evidence, if any. The Village Panchayat is empowered to proceed to execute the order or notice issued under Section 76(1) of the Act if it is satisfied that the objection which is raised is invalid or insufficient.

2. In dealing with the first contention let me turn to the said notice dated 18th March, 2001 issued by the Village Panchayat. It is no doubt true that notice prima facie, suggests that the same is not in consonance with the provisions of Section 76(4) of the Act. However, after receipt of this notice, the Petitioner proceeded to reply to the said notice and after receipt of his reply, he was called to the Office of the Village Panchayat and the matter was discussed with him. Therefore, it is clear that there is a substantial compliance of Section 76(4) of the Act. The compliance may not be in the literal sense as the sub-Section contemplates.

3. The aforesaid ground of attack could have assumed importance, had it been raised before the lower appellate Authority at the time of the hearing of the Appeal. The absence of this contention before the appellate Authority leads me

to draw an inference that this contention has not been pressed on the contrary waived by the Petitioner. It is not the case of the Petitioner that this contention was raised before the appellate Authority and the same has been brushed aside by the appellate Authority. No such grievance is to be found in the Petition. Therefore, in the present Petition before this Court, this question cannot be allowed to be raised for the first time. However, no prejudice could be inferred from non-compliance of the said provision in strict sense in view of the fact that the Petitioner availed of an opportunity of filing his reply and attending the Office of the Panchayat and had opportunity to discuss the same with the Authorities.

4. The second ground sought to be pressed in service is about the inspection report. The contention is that the inspection was carried out behind the back of the Petitioner. Even this contention was not raised before the lower appellate Authority. No grievance is to be found in the Petition that this contention was raised but not dealt with by the appellate Authority. In this view of the matter the second contention also cannot be allowed to be raised before this Court for the first time as it needs investigation of factual aspect of

the matter.

5. So far as third contention with respect to the power under Section 76(1) is concerned, it is a discretionary power. However, discretion is to be used and exercised on the material available before the authorities. Reading of the Order of the appellate Authority shows that the sufficient material was available before the Authorities to take action under Section 76(1) of the Act. In this view of the matter, the Authorities have exercised discretion based on material. In this behalf it would be useful to refer to the observations of the Apex Court in the case of **Uttar Pradesh Co-operative Federation Ltd.** v. **Sunder Bros., Delhi** (AIR 1967 SC 249) reading as under:-

> " Where the discretion vested in the Court under Section 34 has been exercised by the lower Court, the appellate Court would be slow to interfere with the exercise of their discretion. In dealing with the matter raised before it at the appellate state, the appellate Court would normally not be justified in interfering with the exercise of ;the discretion under appeal solely on the ground that

> if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify such interference with the trial Court's exercise of discretion. If it appears to the appellate Court that in exercising its discretion the trial Court has acted unreasonably or capriciously or has ignored relevant facts, then it would be open to the appellate Court to interfere with the trial Court's exercise of discretion."

No perversity in the Order or action could be pointed by the Petitioner.

6. The Writ Petition is therefore dismissed in limine being devoid of any merit with no order as to costs.

V.C. DAGA,J.

ac.